



STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS

POLICY REGARDING
CONSULTATION
WITH
WISCONSIN'S INDIAN TRIBES

A handwritten signature in black ink, appearing to read "Jim Doyle", is written over a horizontal line.

Governor Jim Doyle

A handwritten signature in black ink, appearing to read "Matthew Frank", is written over a horizontal line.

Secretary Matthew Frank

June 28, 2005

I. Introduction

- A. The various states have a unique legal relationship with each sovereign American Indian Tribal government, as affirmed and described in federal law. This relationship is set forth in the Constitution of the United States, treaties, statutes, laws, and court decisions. Wisconsin Executive Order #39, issued by Governor Jim Doyle in February 2004, affirms the government to government relationship between the State of Wisconsin and each American Indian Tribal government located within the State of Wisconsin.
- B. Government-to-government relations involve respectful and cooperative communications and dealings that are designed to achieve a consensus, to the extent possible, before a decision is made or an action is taken, and to implement programs in a collaborative manner. The Wisconsin Department of Corrections (DOC) is committed to such government-to-government relations with the federally recognized Tribal governments of Wisconsin (Tribes). This directive formalizes the collaborative relationship already established between the DOC and Tribal governments. DOC will employ its best efforts to achieve positive outcomes from its consultation and collaboration.
- C. DOC is headed by a cabinet-level Secretary, employs approximately 10,000 employees, and is comprised of four separate divisions: the Division of Adult Institutions, the Division of Community Corrections, the Division of Juvenile Corrections, and the Division of Management Services. The Division of Adult Institutions manages approximately 22,000 inmates housed in one of the state's maximum, medium, or minimum-security institutions or correctional centers. The Division of Community Corrections supervises over 69,000 offenders on probation, parole, or extended supervision in Wisconsin. The Division of Juvenile Corrections is charged with the custody and care of adjudicated juveniles in Wisconsin's three juvenile correctional facilities. Finally, the Division of Management Services is responsible for technical and managerial support of the Department, including technology, procurement, human resources, and budget functions. In addition, the Office of Victim Services and Programs, which is responsible for maintenance of the state's victim notification system and serving as a Department liaison on victims issues, and the Office of Detention Facilities, which primarily works with local county jails, are housed within the Office of the Secretary. Finally, the Wisconsin Parole Commission, which makes parole decisions for offenders sentenced prior to December 31, 1999, is administratively attached to the Department.
- D. Each of the federally recognized sovereign Tribes in the State of Wisconsin is recognized by the State for its unique status and its right to self-government and self-determination. DOC respects the fundamental principles that establish and maintain the relationship between Tribes and DOC, and accord Tribal governments the same respect accorded to other governments.
- E. As residents of the State of Wisconsin, Tribal members are equally entitled to those services afforded to all residents of the State. As members of a sovereign Tribal nation, Tribal members are entitled to those services afforded to all members of that Tribal nation. Whether the services are provided through DOC or through Tribal agencies, it is critical that DOC Executive Leadership and Tribal leadership and their representatives consult with one another to assure that needed services are provided and received in a manner that is both efficient and effective.

II. Objectives

This directive reflects the desire of DOC to implement a formal government-to-government relationship with each sovereign American Indian Tribal government located within Wisconsin, as directed by Executive Order 39. Specifically, this directive establishes policies and procedures for DOC to work with Tribal governments, Tribal communities, and Tribal people to promote and improve public safety and to improve the nature and consistency of the cooperation and collaboration between DOC and the Tribes.

The objectives of this policy are as follows:

- A. To create a collaborative effort (relationship) to improve the public safety of Tribal communities and community members through the provision of efficient and effective services.
- B. To formalize the process and expectations for DOC to implement a government-to-government relationship and to seek consultation with and participation of representatives of Tribal governments in policy development and program activities.
- C. To promote and develop methods of obtaining consultation on issues from Tribal governments and to involve their representatives in the DOC decision-making process.

III. Guiding Principles

DOC is committed to improving and maintaining effective government-to-government relations with the Tribes. The development of mutual understanding with cultural awareness and sensitivity is necessary to effective consultation on policy and collaboration on program operations. DOC shall utilize the following principles in consulting on policy and program issues with Tribal governments.

- A. It is important to recognize the uniqueness of each Tribe's culture, governmental structure and processes, demographics, and geography (i.e. where Tribal members are located), and other factors.
- B. Working directly with American Indian Tribes in a government-to-government manner will result in an effective, efficient, and sustainable consultation process.
- C. Consultation with Tribal governments when developing and implementing budgets, policies and programs, legislative initiatives, regulations and other activities that are anticipated to affect American Indian Tribes or their members is necessary and respectful. This includes issues presented by the Tribes on which they would like consultation.
- D. Consultation involves respectful and timely communication with Tribal governments in a cooperative process that strives to achieve a consensus before a decision is made or an action is taken. Promotion of cooperation among affected parties is the best way to solve issues of mutual concern.

IV. Purpose and Methods

DOC, with the concurrence of the Tribes as sovereign nations, will diligently seek to maintain an ongoing and meaningful process for communicating general concerns, program and funding priorities, respective roles in the provision of services to Tribal community members, and other high-level matters of mutual concern.

DOC, together with the Wisconsin federally recognized Tribal governments, establishes this policy requiring consultation by and between these governments on DOC policies and activities. This section of the policy outlines the protocols for the DOC and the Tribes to achieve these goals.

A. Annual Meeting

The Secretary of the Department of Corrections shall assume the responsibility for scheduling, in consultation with Tribal leadership, an annual consultation session at which the Secretary will be present, which must include invitations to, at a minimum, the following individuals (who may designate another individual with appropriate authority to attend):

- Chairperson, Bad River Band of Lake Superior Tribe of Chippewa Indians
- President, Ho-Chunk Nation
- Chairperson, Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- President, Lac du Flambeau Band of Lake Superior Chippewa Indians
- Chairperson, Menominee Indian Tribe of Wisconsin
- Chairperson, Oneida Tribe of Indians of Wisconsin
- Chairperson, Forest County Potawatomi Community
- Chairperson, Red Cliff Band of Lake Superior Chippewa Indians
- Chairperson, Sokaogon Chippewa Community
- Chairperson, St. Croix Chippewa Indians of Wisconsin
- President, Stockbridge-Munsee Band of Mohican Indians
- Tribal Administrators and program staff as determined by the Tribal Leadership
- DOC Division Administrators and other staff as determined by the Secretary

The agenda, date, and location of the consultation session shall be determined jointly by the Secretary and the Tribal Chairpersons and Presidents. The schedule will take into account the desirability of allowing adequate time during even numbered years for development of DOC Tribal biennial budget initiatives.

It shall be part of the consultation agenda for at least one meeting to review and evaluate the accomplishments and effectiveness of the previous year's DOC action plan (see Subsection C) and to establish mutual goals for the current year's action plan. The agenda shall also include a current DOC organizational chart.

B. Other Meetings

The Secretary shall assume responsibility for scheduling, in consultation with Tribal leadership, additional consultation sessions at his or her discretion. In addition, any Tribal Chairperson or President may request meetings or other consultation with the Secretary or other DOC representatives.

C. Annual Action Plan

DOC shall establish, in conjunction with the appropriate Tribal program staff, an annual action plan by which this government-to-government consultation policy shall be implemented. The action plan shall include:

- Programs: An overview of DOC programs and a DOC organizational chart.
- Policy and Program Development: Description of any new or potential initiatives, policies, or programs that affect the Tribes.
- Priorities: Priority issues for resolution with the Tribes.
- Consultation Process: The procedures to be used to consult with Tribes on existing and new policies and programs. DOC Division Administrators, when developing new policies or programs, or changing existing policies or programs will question if the change could affect Tribes in Wisconsin. If the answer is yes, or maybe, then consultation with the Tribes must take place.
- Evaluation Process: The process to determine the effectiveness of the action plan with respect to the consultation process and to the programmatic, fiscal, and other aspects of applicable DOC programs and policies identified in the action plan.

D. Training

It shall be part of consultation agendas to establish regular, ongoing training sessions for appropriate DOC employees and other individuals. The purpose of this training is to educate DOC employees regarding the requirements of a meaningful government-to-government relationship, including historical and cultural perspectives from the Tribes, and information about the importance of consensus building, Tribal sovereignty and Tribal government and services. The Department of Administration's Division of Intergovernmental Relations will facilitate training and curriculum for appropriate department staff.

V. Issue/Dispute Resolution

From time to time, specific issues affecting one or more Tribes and DOC may arise. These issues may be raised either by a Tribe or by DOC. The following process should be used when such issues arise.

A. Initial Discussion

When an issue arises and an authorized and designated employee of either a Tribe or DOC contacts an employee of the other entity, the individuals involved will discuss the issue and attempt to resolve it.

If higher level involvement is required, the process described in Section V-B should be followed.

If the issue being discussed would affect a Tribe or Tribes other than the Tribe involved, further discussion should occur as described in Section V-C.

B. Issues Requiring Higher Level Involvement

If higher level involvement is needed, the issue will be raised to the appropriation management level in DOC and the appropriate level in the Tribe. Within DOC, the employee contacted shall

inform his/her Appointing Authority, who will facilitate contact with the appropriate authority within DOC. Communication between those parties shall occur as soon as reasonably possible to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved, the involved parties will determine if a process can be established for resolving the issue. It is recognized that some issues may not be resolved to the satisfaction of all parties. However, communication will occur from DOC to the Tribe(s) as to the status of the issue.

C. Issues Affecting More than One Tribe

If it is determined that resolution or non-resolution of the issue will affect Tribes other than the Tribe which raised the issue, the DOC representative will make contact with representatives of all other Tribes. Communication involving all of the parties potentially affected will be facilitated by a DOC representative.

If the issue is resolved through agreement of the parties involved, no further action is required. If the issue cannot be resolved, then the issue shall be raised to higher level authorities as described in Section V-B.

VI. Outreach to Tribal Governments by Committees and Workgroups

The focus of this consultation policy is with individual Tribal governments. During the normal course of business, it is often necessary for the DOC to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to the DOC. Such committees, councils, workgroups or similar bodies, when dealing with policies or programs affecting tribal governments, shall inform tribal Chairpersons/Presidents, in writing, of the proposed policy or program in order to solicit tribal input.

VII. Definitions

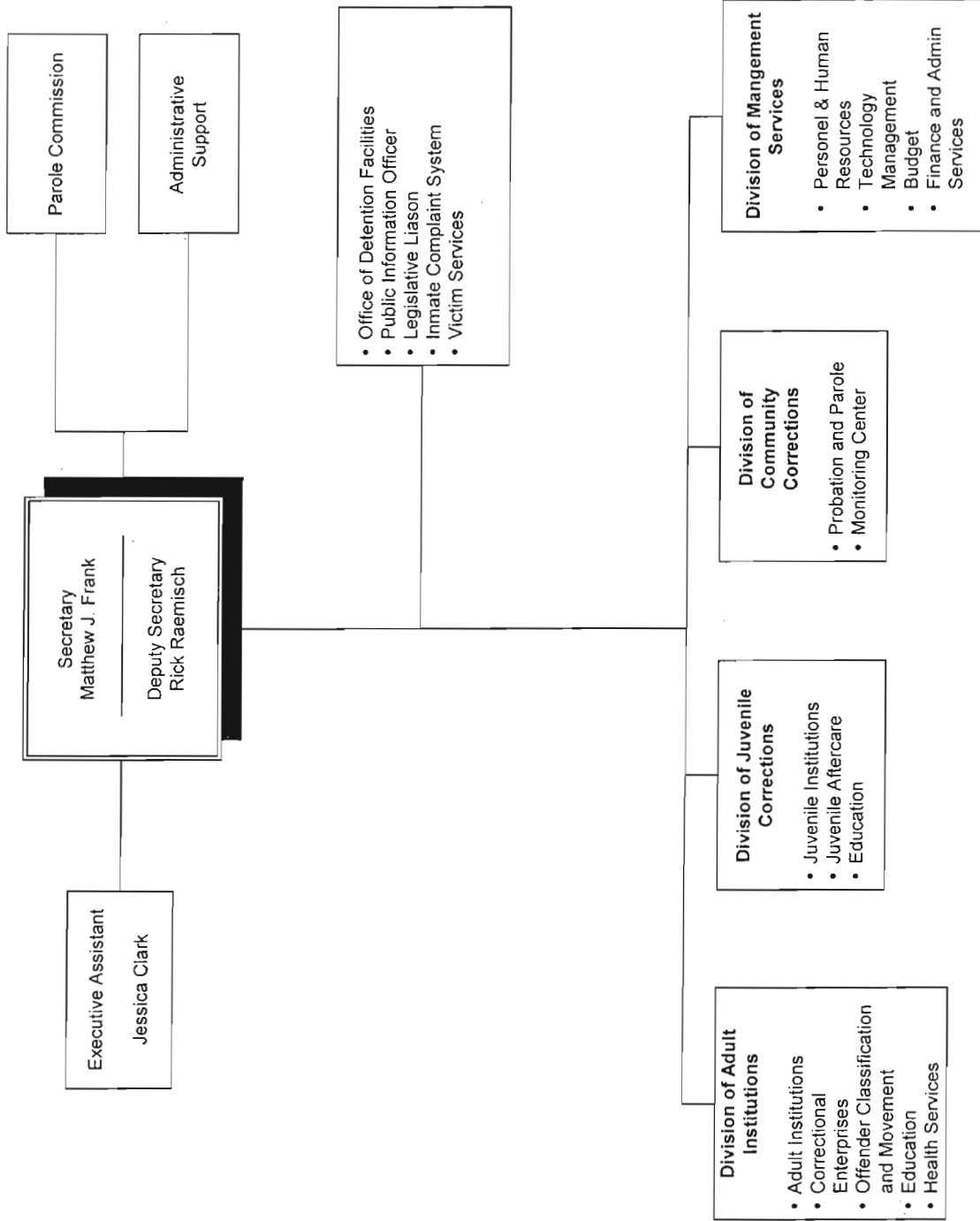
"American Indian Tribal Government" or "federally recognized Indian Tribe" – a sovereign government of a Native American people, embracing and occupying lands and territory, and having jurisdiction over the same, lying within the geographical boundaries of the state of Wisconsin, whose sovereignty is recognized by the Government of the United States of America and subject to the Constitution, laws, and treaties of the United States of America.

"*Consultation*" references a tool used to facilitate communication and interaction between the state government entity and all of the federally recognized Tribes in Wisconsin.

"*Division*" means a subunit of DOC responsible for the management, administration, and provision of programs and services in specific program areas. DOC has four Divisions: The Division of Adult Institutions; the Division of Community Corrections, the Division of Juvenile Corrections, and the Division of Management Services.

"*Government-to-government*" – communication and dealings between sovereign governments, their agencies, and other official entities.

DEPARTMENT OF CORRECTIONS ORGANIZATION



June 2005

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